

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

LEON E. WOOD

PLAINTIFF

V.

CIVIL ACTION NO.: 1:06CV203-SA-SAA

**COMMISSIONER OF
SOCIAL SECURITY**

DEFENDANT

**ORDER SUSTAINING OBJECTION
AND SETTING ASIDE REPORT AND RECOMMENDATION**

Presently before the Court is Plaintiff's objection to the February 16, 2007, first Report and Recommendation (R&R) of the United States Magistrate Judge assigned to this cause. Upon due consideration, the Court finds that Plaintiff's objection should be SUSTAINED and the magistrate's R&R SET ASIDE.

The magistrate judge recommended that the case be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). The Plaintiff timely objected to the magistrate's Report and Recommendation. Plaintiff stated that neither he nor his counsel received a copy of the October 10, 2006, Order allowing him thirty days to submit a Brief in support of his claim, and that the first correspondence received from the Court was the R&R dated February 16, 2007. Plaintiff noted that he does not wish to abandon his claim and requested additional time to submit his Brief.

Plaintiff was granted additional time to file his Brief on March 19, 2007, and again on May 1, 2007. Plaintiff's Brief in support of his claim was filed on May 31, 2007. Because Plaintiff was granted additional time to file his Brief and Plaintiff's Brief indeed was filed, the Court sustains Plaintiff's objection and hereby sets aside the Magistrate's R&R.

THEREFORE, it is hereby ORDERED that

- (1) the Plaintiff's objection to the Report and Recommendation of the United States Magistrate Judge is SUSTAINED; and
- (2) the Magistrate's February 16, 2007, Report and Recommendation [11] is SET ASIDE.

SO ORDERED this the 26th day of August 2008.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE